

05 - 24 - 06

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Practitioner's Docket No. _____

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Application No.: 10 / 816,074 Group No.: 2632

Filed: 4-1-04

Examiner: Sterling, Amy 30

For: Assistive Economic Desktop System
and modular components

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**PETITION FOR REVIVAL OF AN APPLICATION
FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 C.F.R. § 1.137(a)**

NOTE: In a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995, any petition to revive pursuant to this section must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. Any terminal disclaimer pursuant to this paragraph must also apply to any patent granted on continuing utility or plant application filed before June 8, 1995, or a continuing design application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application for which revival is sought. The provisions of this paragraph do not apply to lapsed patents. 37 C.F.R. § 1.137(d)(2).

1. Applicant petitions for the revival of the above-identified application.

NOTE: Extensions under 37 C.F.R. § 1.136 are available only if asked for "prior to or with the response." Accordingly, if the question of abandonment arises when the provisions of § 1.136 can no longer be used then the application is abandoned when the unextended time for response has expired. See Notice of July 9, 1985 (1056 O.G. 60-61). Thus: An application which is abandoned for failure to respond within a set period with no extension fee having been paid, would not require the payment of extension fees as a condition for revival.

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10*

(When using Express Mail, the Express Mail label number is mandatory;
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

☒ deposited with the United States Postal Service in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

37 C.F.R. § 1.8(a)

37 C.F.R. § 1.10*

☐ with sufficient postage as first class mail.

☒ as "Express Mail Post Office to Addressee"

Mailing Label No. EV623399199 (mandatory)

TRANSMISSION

☐ facsimile transmitted to the Patent and Trademark Office, (571) 273-8300.

Date: 5/23/06

Signature

Kim L. Desch
(type or print name of person certifying)

* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

(Petition to Revive Application Abandoned Unavoidably [11-4]—page 1 of 4)

BEST AVAILABLE COPY

2. Nature of abandonment:

(check appropriate box and complete)

- ☒ In an office communication from the PTO dated 4-3-06, the undersigned has noted that the above-identified application is being forwarded to the Abandoned Files because applicant's response to the Official Action mailed 5-18-05 has not been received within the statutory period or any extension requested therefor.
- ☐ The undersigned has reviewed his records and noted that the response to the Official Action mailed _____ was not timely filed within the statutory period or any extension requested therefor.

3. Response filed:

NOTE: The response does not require a request and fee for extension of time as a condition of revival. Notice of July 9, 1985 (1056 O.G. 60-61).

The proposed response to the Official Action mailed 5-18-05
☒ has been filed on 6-16-05

- ☐ Is enclosed herewith.

NOTE: 37 C.F.R. 1.137(c):

(c) Reply. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must include payment of the issue fee or any outstanding balance. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

- ☐ In connection with the required reply which is required by this petition, please note that:
- ☐ the response in this case is the filing of a continuation application having an express abandonment of the instant application upon its revival conditioned on the granting of a filing date to the continuing application copending with this application.
 - ☐ the response is by the filing of a request for continued examination in compliance with § 1.114.
 - ☐ the required issue fee or any portion thereof is paid.
 - ☐ the required publication fee is paid.
4. Showings from the relevant parties as to the causes of the unavoidable delays are filed herewith; said showing establishes that the entire delay in filing the required reply from the due date for the reply until the filing of this petition was unavoidable. 37 C.F.R. § 1.137(a)(3).
5. It will be seen from the attached showings that the processing procedures have been carefully reviewed and that steps have been taken to avoid repetition of the events which took place in this case so that a similar error will not be made in the future.

NOTE: The fee is set in 37 C.F.R. § 1.17(f).

6. Terminal disclaimer 37 C.F.R. § 1.137(d):

NOTE: 37 C.F.R. 1.137(d):

(d) Terminal disclaimer.

(1) Any petition to revive pursuant to this section in a design application must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. Any petition to revive pursuant to this section in either a utility or plant application filed before June 8, 1995, must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the lesser of:

(i) The period of abandonment of the application; or

(ii) The period extending beyond twenty years from the date on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121, or 365(c), from the date on which the earliest such application was filed.

Since this application is:

- ☐ a design application
- ☐ a utility application filed before June 8, 1995

a terminal disclaimer and the fee set forth in § 1.321 accompanies this petition.

7. Status of applicant:

This application is on behalf of

- ☒ small business entity—fee \$250.00
 - ☐ statement already filed on 4-1-04
 - ☐ statement attached.
- ☐ other than a small business entity—fee \$500.00

8. Fee payment:

- ☒ Attached is a ☒ check ☐ money order in the amount of \$ 250.00
- ☐ Authorization is hereby made to charge the amount of \$ _____
 - ☐ to Deposit Account No. _____
 - ☐ to Credit card as shown on the attached credit card information authorization form PTO-2038.

WARNING: Credit card information should not be included on this form as it may become public.

- ☐ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

9.


(complete the following, if applicable)

- ☐ Because this petition is more than 3 months after the date the Office first notified the applicant that the application is abandoned, applicant additionally submits a showing as to how the delay between the date the applicant was first notified that the application is abandoned and the filing of this petition under 37 C.F.R. § 1.134(a) was unavoidable. 62 Fed. Reg. 53,131, 53,159 (Oct. 10, 1997); Section 711.03(c), MPEP, 8th Edition, Rev. 2.
- ☐ Because this petition is more than 1 year after the date of abandonment of the application, applicant additionally submits further information as to when applicant (or applicant's representative) first became aware of the abandonment of the application, and a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant (or applicant's representative). 62 Fed. Reg. 53,131, 53,159 (Oct. 10, 1997); Section 711.03(c), MPEP, 8th Edition, Rev. 2.

Reg. No.:

Tel. No.: (858) 682-4078

Customer No.:


SIGNATURE OF PRACTITIONER Applicant
Kim L. Desch
(type or print name of practitioner)

14994 Huntington Gate Dr.
P.O. Address

San Jose, CA 95128



In Re Patent Application of:

Inventor(s): Kim L. Desch
Filed: 4/1/04
Serial No.: 10/816,074
Art Unit: 2632
Examiner: Amy Jo Sterling
Title: Assistive Ergonomic Desktop System and Modular Components

Mail Stop Petitions
Commissioner for Patents
P.O. BOX 1450
Alexandria, VA 22313-1450

**STATEMENT OF FACTS SUPPORTING PETITION FOR REVIVAL FOR PATENT
ABANDONED UNAVOIDABLY UNDER 37 C.F.R. 1.137(a)**

Sir:

The below represents the Statement of Facts relative to the above-identified matter.

Responsive to the Request for an Election of Species mailed 5/18/05 by the USPTO, Applicant timely filed a response by facsimile on 6/16/05 to the fax number as indicated by the Examiner in said action, (517) 273-6823. A copy the Examiner's initial action indicating use of that fax number, as well as a copy of Applicants response with the confirmation of successful facsimile transmission is also attached hereto.

On or around mid-December of 2005, Applicant then received a telephone message from Examiner Sterling. Applicant made several attempts to recontact Examiner Sterling on December 13, 14, 21, 2005 and again on January 10, 2006. Copies of the relevant telephone statements indicating those attempts are attached hereto.

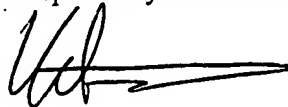
Applicant received a Notice of Abandonment for the above-identified matter dated 4/3/06. Upon receipt of such Notice, Applicant successfully made contact with Examiner Sterling and was informed by the Examiner that the present application was abandoned for failure to respond to the Species Requirement mailed 5/18/05. Applicant then explained the details surrounding said timely filed response and the numerous attempts made to contact the Examiner responsive to the telephone message she left for Applicant.

Inventor(s): Kim L. Desch
Filed: 4/1/04
Serial No.: 10/816,074

As a result of this telephone conversation, Examiner Sterling suggested that Applicant submit to the PTO the present PETITION FOR REVIVAL FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 C.F.R. 1.137(a). Applicant therefore submits said Petition herewith along with the requisite fee for said Petition of \$250.00 for a Small Entity. As Applicant's initial response to the Species Requirement was timely filed, it is not believed that any Extension Fees are required.

Applicant therefore respectfully requests an immediate favorable decision by the Examiner on this Petition and invites the Examiner to contact the Applicant at the below indicated telephone numbers if any further clarification of the Statements of Facts are required.

Respectfully submitted,



Kim L. Desch

Please send correspondence to:

Kim L. Desch

14994 Huntington Gate Drive

Poway, CA 92064

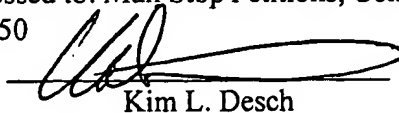
Tel.: (858) 513-0089; Mobile: (858) 682-4078; Fax: (858) 513-0089

CERTIFICATE OF EXPRESS MAILING

"Express Mail" Label: EV 623399199 US

Date of Deposit: May 23, 2006

I hereby certify that the above-referenced application papers are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. §1.10 on the date indicated above and is addressed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450



Kim L. Desch



Customer	Account Number	Bill Period	Bill Date	Page
KIM DESCH	0141557012-5	Nov 25 - Dec 24	Dec 28, 2005	8 of 10

Detail for 858-682-4078 (Continued)

Call Detail

	Date	Time	Phone Number	Call Destination	Rate/Type	Minutes Used	Airtime Charges	LD/Additional Charges	Total Charges
105	12/9	11:14 A.M.	858-513-0089	Poway, CA		2.0	included	0.00	0.00
106	12/9	11:17 A.M.	307-237-7212	Casper, WY		10.0	included	0.00	0.00
107	12/9	12:42 P.M.	Incoming			2.0	included	0.00	0.00
108	12/9	1:10 P.M.	858-736-4729	La Jolla, CA		1.0	included	0.00	0.00
109	12/9	1:11 P.M.	858-513-0089	Poway, CA		2.0	included	0.00	0.00
110	12/9	4:53 P.M.	858-736-4729	La Jolla, CA		1.0	included	0.00	0.00
111	12/9	4:54 P.M.	Incoming			1.0	included	0.00	0.00
112	12/10	12:32 P.M.	Incoming			1.0	included	0.00	0.00
113	12/10	4:49 P.M.	858-513-3955	Poway, CA		1.0	included	0.00	0.00
114	12/12	8:27 A.M.	Incoming			7.0	included	0.00	0.00
115	12/12	8:44 A.M.	858-829-4728	Poway, CA		4.0	included	0.00	0.00
116	12/12	11:14 A.M.	858-682-4078	Poway, CA		1.0	included	0.00	0.00
117	12/12	11:26 A.M.	Incoming			1.0	included	0.00	0.00
118	12/12	1:48 P.M.	858-736-4729	La Jolla, CA		3.0	included	0.00	0.00
119	12/12	2:07 P.M.	Incoming			1.0	included	0.00	0.00
120	12/12	2:12 P.M.	307-237-7212	Casper, WY		1.0	included	0.00	0.00
121	12/13	7:54 A.M.	858-682-4078	Poway, CA		1.0	included	0.00	0.00
122	12/13	8:58 A.M.	858-499-2777	Lindavista, CA		6.0	included	0.00	0.00
123	12/13	9:04 A.M.	858-878-4808	Poway, CA		1.0	included	0.00	0.00
124	12/13	9:05 A.M.	800-817-4277	800 Svc		1.0	included	0.00	0.00
125	12/13	9:05 A.M.	800-827-4277	800 Svc		3.0	included	0.00	0.00
126	12/13	9:10 A.M.	Incoming			1.0	included	0.00	0.00
127	12/13	9:11 A.M.	858-653-6175	Mira Mesa, CA		7.0	included	0.00	0.00
128	12/13	9:17 A.M.	858-682-4078	Poway, CA		1.0	included	0.00	0.00
129	12/13	9:31 A.M.	Incoming			29.0	included	0.00	0.00
130	12/13	12:00 P.M.	571-272-6823	Alexandria, VA		1.0	included	0.00	0.00
131	12/13	12:01 P.M.	858-736-4729	La Jolla, CA		2.0	included	0.00	0.00
132	12/13	12:54 P.M.	Incoming			1.0	included	0.00	0.00
133	12/13	12:55 P.M.	307-237-7212	Casper, WY		2.0	included	0.00	0.00
134	12/13	1:15 P.M.	411	Dir. Asst.		2.0	included	1.40	1.40
135	12/13	1:24 P.M.	Incoming			4.0	included	0.00	0.00
136	12/13	2:42 P.M.	858-682-4078	Poway, CA		1.0	included	0.00	0.00
137	12/13	2:44 P.M.	858-668-4083	Poway, CA		1.0	included	0.00	0.00
138	12/13	2:53 P.M.	858-668-4083	Poway, CA		2.0	included	0.00	0.00
139	12/13	2:54 P.M.	858-499-2777	Lindavista, CA		2.0	included	0.00	0.00
140	12/13	2:58 P.M.	858-653-8136	Mira Mesa, CA		2.0	included	0.00	0.00
141	12/13	3:02 P.M.	858-748-5592	Poway, CA		5.0	included	0.00	0.00
142	12/13	3:09 P.M.	858-623-1183	Rochester, CA		3.0	included	0.00	0.00
143	12/13	3:18 P.M.	858-736-4729	La Jolla, CA		1.0	included	0.00	0.00
144	12/13	3:20 P.M.	800-832-3211	800 Svc		6.0	included	0.00	0.00
145	12/13	3:28 P.M.	800-832-3211	800 Svc		2.0	included	0.00	0.00
						7.0	0.70	0.00	0.70
146	12/13	3:32 P.M.	Incoming		OV	1.0	0.10	0.00	0.10
147	12/13	3:45 P.M.	858-866-4003	Lindavista, CA		3.0	0.30	0.00	0.30



www.cox.com

6400 0340 XC RP 17 0009083 01142006 NNNNNNNN

January 13, 2006

Account Number: 501 3110 061741401

KIM&DAVID DESCH

Page 3 of 5

Payments

Date	Type	Amount
01/07/06	THANK YOU FOR YOUR PAYMENT	-54.39
Total Payments Received		\$-54.39

Cox Digital Telephone Service

Telephone Service for
858-513-0089

Monthly Telephone Service from Jan 17 to Feb 16

	Quantity	Amount
ACTIVE LIFESTYLE PACKAGE	1	5.95
COX LONG DISTANCE	1	0.00
BASIC MONTHLY SERVICE	1	9.99
ECC ACCESS CHARGE	1	4.38
DIRECTORY LISTING NON-PUBLISHED	1	0.28
COX US 500 SAVINGS	1	25.00
Total Monthly Telephone Service		\$45.60

Telephone Usage Charges

Call Return	2	1.98
Dir Assist & Local Usage Charges	3	2.97
Cox Long Distance	32	0.00
Total Telephone Usage Charges		\$4.95

Total Telephone Service for 858-513-0089 \$50.55

Total Cox Digital Telephone Service \$50.55

Cox Digital Telephone Service Call Detail

Call Detail for 858-513-0089

Cox Long Distance

Date	Time	Place	Number	Rate/Time	Min:Sec	Amount
December 14	07:43A	CHEYENNE, WY	307-778-7222	DD/N	1:00	\$0.00
December 14	07:50A	CHEYENNE, WY	307-778-7222	DD/N	1:00	\$0.00
December 14	07:53A	CHEYENNE, WY	307-778-7222	DD/N	15:00	\$0.00
December 14	10:04A	ALEXANDRIA, VA	571-272-6823	DD/D	1:00	\$0.00
December 15	06:02P	CASPER, WY	307-237-7212	DD/E	1:00	\$0.00
December 17	09:13A	CASPER, WY	307-237-7212	DD/N	19:00	\$0.00
December 19	08:36P	SAN DIEGO, CA	619-665-3871	DD/E	2:00	\$0.00
December 19	08:37P	SAN DIEGO, CA	619-665-3871	DD/E	1:00	\$0.00
December 20	02:23P	CASPER, WY	307-237-7212	DD/D	13:00	\$0.00
December 21	02:29P	ALEXANDRIA, VA	571-272-6823	DD/D	1:00	\$0.00
December 23	09:53A	SAN DIEGO, CA	619-665-3871	DD/D	1:00	\$0.00
December 23	10:08A	LONG BEACH, CA	562-595-8818	DD/D	1:00	\$0.00



www.cox.com

6400 0340 XC RP 17 0008083 01142008 NNNNNNNN

January 13, 2006

Account Number: 501 3110 061741401

KIM&DAVID DESCH

Page 4 of 5

Cox Digital Telephone Service Call Detail continued

Date	Time	Place	Number	Rate/Time	Min:Sec	Amount
December 23	01:48P	SAN DIEGO, CA	619-665-3871	DD/D	27:00	\$0.00
December 25	08:44A	CASPER, WY	307-237-7212	DD/N	21:00	\$0.00
December 25	09:05A	MESA, AZ	480-854-0046	DD/N	16:00	\$0.00
December 25	10:33A	EVANSTON, WY	307-789-6026	DD/N	7:00	\$0.00
December 25	09:32P	CASPER, WY	307-237-7212	DD/E	6:00	\$0.00
December 26	09:46A	LONG BEACH, CA	562-595-8818	DD/D	1:00	\$0.00
December 26	03:14P	JULIAN, CA	760-765-2770	DD/D	1:00	\$0.00
December 26	03:16P	HARBORLAND, CA	619-445-2515	DD/D	1:00	\$0.00
December 26	03:19P	CHULAVISTA, CA	619-421-2847	DD/D	1:00	\$0.00
December 26	03:21P	SUN CITY, CA	951-672-4837	DD/D	1:00	\$0.00
December 26	03:34P	IDYLLWILD, CA	951-859-4137	DD/D	1:00	\$0.00
January 1	12:43P	CASPER, WY	307-237-7212	DD/N	8:00	\$0.00
January 2	05:14P	CASPER, WY	307-577-5685	DD/E	7:00	\$0.00
January 5	10:10A	SAN JOSE, CA	408-924-3131	DD/D	1:00	\$0.00
January 5	10:14A	SAN JOSE, CA	408-924-3162	DD/D	1:00	\$0.00
January 5	03:50P	ANAHEIM, CA	714-781-4400	DD/D	4:00	\$0.00
January 10	12:56P	ALEXANDRIA, VA	571-272-6823	DD/D	1:00	\$0.00
January 10	08:28P	SAN DIEGO, CA	619-665-3871	DD/E	15:00	\$0.00
January 11	07:40A	WINSTON-SALEM, NC	336-766-4650	DD/N	1:00	\$0.00
January 11	05:17P	SAN DIEGO, CA	619-665-3871	DD/E	1:00	\$0.00
Total Cox Long Distance					179:00	\$0.00

Rate Codes

DD = Direct Dialed

OS = Operator Station/Station

CP = Calling Card Person/Person

OP = Operator Person/Person

CC = Calling Card

OC = Operator Collect

WC = Web Conferencing

Time Codes

Domestic: D = Day

International: R = Standard

E = Evening

T = Discount

N = Night/Weekend

Y = Economy

S = Payphone Surcharge

M = Mobile

Fees, Surcharges & Taxes

Telephone Fees, Surcharges & Taxes	Amount
Telephone - Government Fees & Taxes	
Federal Tax	1.54
CA Relay Svc and Comm Dev	0.07
E911 Tax	0.26
Universal Lifeline Service	0.33
CA High Cost Fund Surcharge A	0.05
CA High Cost Fund Surcharge B	0.52
State Regulatory Fee	0.04
California Teleconnect Fund	0.04
Telephone - Other Surcharges	
Universal Service Fund	1.56
Total Telephone Fees, Surcharges & Taxes	\$4.41
Total Fees, Surcharges & Taxes	\$4.41



*** FAX TX REPORT ***

TRANSMISSION OK

JOB NO. 0114
DESTINATION ADDRESS 915712736823
PSWD/SUBADDRESS
DESTINATION ID
ST. TIME 06/16 15:32
USAGE T 00'43
PGS. 2
RESULT OK



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application of:

Inventor(s): Kim L. Desch
Filed: 4/1/04
Serial No.: 10/816,074
Art Unit: 2632
Examiner: Sterling, Amy Jo

Title: ASSISTIVE ERGONOMIC DESKTOP SYSTEM
AND MODULAR COMPONENTS

Commissioner for Patents
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT / ELECTION OF SPECIES

Sir:

Responsive to the Restriction Requirement / Election of Species in the above-referenced patent application, mailed 5/18/05, applicant hereby makes the following election without traverse:

TOPS: Species I: Figs. 1, 3A, 3B and 8

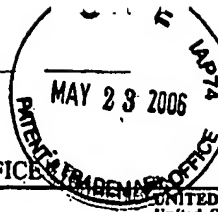
Readable claims on Species I include: Claims 6-8

BOTTOMS: Species IV: Figs. 5 - 7

Readable claims on Species IV include: Claims 1-5; 9; 12-18; and 21-29



UNITED STATES PATENT AND TRADEMARK OFFICE



UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,074	04/01/2004	Kim L. Desch		8895

7590 05/18/2005
Kim L. Desch
14994 Huntington Gate Dr.
Poway, CA 92064

EXAMINER

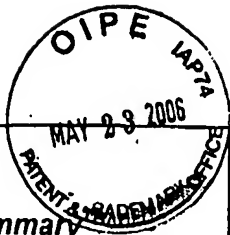
STERLING, AMY JO

ART UNIT PAPER NUMBER

3632

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



Office Action Summary

Application No.

10/816,074

Applicant(s)

DESCH, KIM L.

Examiner

Amy J. Sterling

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-29 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-848)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This is a Restriction and an Election of Species for application number 10/816,074 filed on 4/1/04. Claims 1-29 are subject to election/restriction.

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

It appears than any top (170, 270) may be used with any bottom (175, 300, 400).

The selection of species must include one species from the group of tops and one species from the group of bottoms:

Tops:

✓ Species I: Figs. 1, 3A, 3B and 8

Species II: Fig. 4

Bottoms:

Species III: Figs. 1 and 2

✓ Species IV: Figs. 5-7

Species V: Figs. 8-13

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Application/Control Number: 10/816,074
Art Unit: 3632

Page 4

Conclusion

Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823. The examiner can normally be reached (M-F 8a.m.-5:00p.m.). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 571-272-6815. The fax machine number for the Technology center is 703-872-9306 (formal amendments) or 571-273-6823 (informal amendments). Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600).

Amy J. Sterling
Amy J. Sterling
5/11/05



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,074	04/01/2004	Kim L. Desch		8895

7590

04/03/2006

Kim L. Desch
14994 Huntington Gate Dr.
Poway, CA 92064

EXAMINER

STERLING, AMY JO

ART UNIT PAPER NUMBER

3632

DATE MAILED: 04/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



Notice of Abandonment

Application No.

10/816,074

Examiner

Amy J. Sterling

Applicant(s)

DESCH, KIM L.

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 18 May 2005.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:


Amy J. Sterling 3/22/06

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

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